

**Testimony of Michael Chertoff
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Before the Committee on Financial Services

United States House of Representatives

Chairman Oxley, Congressman LaFalce, and distinguished members of the Committee, I am pleased to appear before the Committee today to discuss the Administration's strategy to attack the system that provided the financial support for the individuals and organizations responsible for the reprehensible terrorist attacks of September 11th. I appreciate the interest of this Committee in looking at the obstacles in the financial sector that impede law enforcement action and looking for ways to overcome these obstacles. On September 25th, Attorney General Ashcroft sent the Department's Money Laundering Act of 2001 to Congress. In my testimony today, I would like to discuss some of the provisions in our bill and explain how they will improve and update our money laundering laws to address the threats we face from terrorism and transnational organized crime.

September 11th marked a turning point in this country's fight against terrorism. President Bush has announced that we will meet that unspeakable attack on democracy with a full commitment of resources and with a firm resolve to rid the world of terrorism. We in law enforcement must do everything within our powers to apprehend those persons who have committed and seek to commit terrorist acts, and we must eradicate the forces of terrorism in our country and around the world. As the President so eloquently stated, "Whether we bring our enemies to justice or bring justice to our enemies, justice will be done."

As an initial step toward accomplishing this national mission against terrorism, the Attorney General has directed the creation of an Anti-Terrorism Task Force within each judicial district to be made up of prosecutors from the U.S. Attorney's Office, members of the federal law enforcement agencies, including the FBI, INS, DEA, Customs Service, Marshals Service, Secret Service, IRS, and the ATF, as well as the primary state and local police forces in that district. These task forces will be arms of the national effort to coordinate the collection, analysis and dissemination of information and to develop the investigative and prosecutive strategy for the country. As an integral part of this national effort, the Department of Justice and the FBI have established an interagency Financial Review Group to coordinate the investigation of the financial aspects surrounding the terrorist events of September 11th and beyond. This new Group has already made significant contributions to our efforts to unravel the plot leading up to the September 11th attacks.

All members of this Committee recognize the importance of understanding the financial components of terrorist and criminal organizations. These financial links will be critical to the larger criminal investigation, while also providing a trail to the sources of funding for these heinous crimes. The importance of "following the money," in this instance, as well as in the investigation of all criminal enterprises, cannot be overstated.

The Need for New Legislation

You have asked me to address today several issues relating to the need for and potential impact of new legislation to fight the battle against the financing of terrorist operations and other forms of money laundering, and I am very happy that you have chosen to focus on this issue

because it is an area of critical importance. As Attorney General Ashcroft has recently stated, and as I and other representatives of the Department of Justice have stated on several occasions in testimony in the House and Senate, we are fighting with outdated weapons in the money laundering arena today. When the money laundering laws were first enacted in 1986, they were designed to address what was primarily a domestic problem. Since 1986, money laundering increasingly has become a global problem, involving international financial transactions, the smuggling of currency across borders, and the laundering in one country of the proceeds of crimes committed in another country. Currency, monetary instruments and electronic funds flow easily across international borders, allowing criminals in foreign countries to hide their money in the United States, and allowing criminals in this country to conceal their illicit funds in any one of hundreds of countries around the world with scant concern that their activities will be detected by law enforcement.

International organized criminal groups based in Asia, Africa, Europe and this hemisphere have seized upon these opportunities for laundering of their assets. These criminals look upon globalization as an invitation to vastly expand the size and scope of their criminal activities – whether these organized criminal groups engage in narcotics trafficking, securities fraud, bank fraud and other white collar crimes, trafficking in persons, or terrorism. With their expanded power and reach, international organized criminals seek to corrupt police and public officials in countries around the world to protect their criminal enterprises and enhance their money-making opportunities. Foreign organized crime groups today threaten Americans, their businesses, and their property, as these groups work to expand their influence into this country.

In this environment, law enforcement is challenged, and the criminals often hold the advantage. Criminals are able to adapt to changing circumstances quickly. They pay no heed to the requirements of laws and regulations and recognize no sovereign's borders. Further, these criminal groups have learned to be adaptable and innovative, and as we succeed in a new enforcement effort or implement a new regulatory regime, they quickly alter their methods and modes of operation to adapt to the new circumstances.

The reality of international money laundering in this new century has caused countries from Northern Europe to South Africa, and from here in the West to the financial centers of the Far East, to look for ways to update their domestic laws to address this threat to our security. Equally important, countries around the globe are searching for ways to work together to address this problem jointly, irrespective of our different legal systems, customs and traditions. Criminal proceeds can be moved from country-to-country in an instant. It is thus critical that our laws are brought up to date, so that we may act effectively and cooperate fully with our partners in law enforcement abroad. The United States should be the leader in this process, but sadly we are falling behind. While our laws have remained mostly static for 14 years, other countries are moving ahead to criminalize international money laundering and to take other steps to separate criminals from their criminal proceeds.

Legislative Initiatives

The events of September 11th dramatically illustrate the horrendous consequences that can flow from allowing criminals the unfettered ability to move cash freely around the country and across our borders to finance their atrocities. That is why the Attorney General sent to Congress

the Money Laundering Act of 2001. But this legislation was not hastily put together, nor does it deal only with terrorism. This legislation has been in development for a substantial period of time and sets out a core group of statutory tools that are necessary to meet the domestic and transnational organized crime threats of the 21st Century.

I am pleased to have the opportunity to discuss today some of the obstacles we face in the financial sector that impede necessary law enforcement action and also to discuss how our bill seeks to overcome those obstacles.

First, while our money laundering laws make it a crime for foreign drug dealers, terrorists or those who have committed bank fraud to send their profits to the United States, the great majority of other foreign crimes - crimes that routinely generate money that criminals need to hide or invest somewhere else - are not on the list. The result is that U.S. prosecutors are routinely forced to turn down cases involving money sent into the United States by corrupt foreign public officials, swindlers and organized crime groups. This gap in U.S. law makes it extraordinarily difficult for federal law enforcement to keep the proceeds of foreign crimes out of U.S. financial institutions. Section 6 of our bill makes it a crime to launder the proceeds of most foreign crimes in the United States.

A second major money laundering problem we have is bulk cash smuggling. As recent press reports have made very clear, the terrorists we are pursuing used bulk cash smuggling as one of their means of financing their activities without creating a paper trail. In addition, hundreds of millions of dollars in U.S. currency representing drug proceeds, as well as proceeds of other criminal offenses, are transported out of the United States each year in shipments of bulk

cash. The only law enforcement weapon currently available to combat this activity is a requirement that shipments of more than \$10,000 in cash be accompanied by a report to the United States Customs Service. Complicating matters further, the Supreme Court has ruled that the failure to file such a report is not a serious enough offense to warrant the confiscation of bulk cash when it is discovered – even if the smuggler took elaborate steps to conceal the currency. The result is that the effective penalty for smuggling dirty cash into or out of the country is a relatively short prison sentence for the courier – a virtually meaningless penalty for a drug trafficking organization or a money laundering ring. In short, the existing laws against bulk cash smuggling are wholly inadequate. Sections 19 and 20 of our draft bill address this problem.

A third major obstacle we face in financial investigations is the difficulty in obtaining records from foreign banks, even when they have correspondent accounts in U.S. banks. Just as it is offensive that citizens of foreign nations take advantage of the freedom we offer in our country to carry out their plots and crimes against our citizens, I find it deeply troubling that foreign banks and their customers are able to utilize our financial system without being subject to the rules that govern domestic banks and their customers.

Sections 36 and 37 of the Department's bill would eliminate these disparities so that U.S. law enforcement will not have to chase around the globe to obtain bank records and forfeit funds from those who are availing themselves to U.S. banking services. Section 37 would require foreign banks that maintain correspondent accounts at U.S. banks to designate a person in the United States to receive subpoenas for records and would authorize the Attorney General to issue administrative subpoenas for relevant bank records. Section 36 would amend the civil forfeiture

statutes to permit the Government to forfeit funds deposited into a dollar-denominated account overseas, if the foreign bank maintains its dollar deposits in a correspondent account at a bank in the United States.

The Committee has asked me to address the degree to which the Department is receiving full cooperation from foreign law enforcement agencies during this investigation. The Department has been gratified for the enormous cooperation we have received from our foreign counterparts in tracking down all of the persons and organizations that had a role in the September 11th attack. And, in that regard, I would like to focus on another aspect of our legislation. With respect to our ability to freeze, seize and forfeit criminal proceeds or assets intended to be used for criminal purposes, the ability of our foreign counterparts to cooperate with our investigations is often limited by deficiencies in our own laws. In some cases, the laws of foreign countries prohibit cooperation with the United States because of shortcomings in U.S. law. In other cases, we can cooperate with a foreign government to a limited extent but not provide full and effective cooperation. For example, present law now allows our federal court to enforce the orders of foreign courts relating to drug proceeds in the United States, but not for proceeds of other types of crimes. As we speak, foreign countries are working to determine what assets of terrorist groups working within their borders may have involved funds in the United States. If foreign courts issue orders to confiscate that money, we need to be able to enforce them. Moreover, present law does not allow a federal court to restrain the proceeds subject to the foreign court order during the pendency of the enforcement proceeding. Section 39 of the Department's bill would address both of these issues.

There are numerous other provisions in the Department's anti-money laundering bill that would help us enormously in tracking the assets of terrorists. I mention these few as among the most critical, but a comprehensive revamping of these laws is necessary if we are to make meaningful headway against terrorism and other forms of international organized crime. The Department's Money Laundering Act of 2001 sets out a core group of statutory tools that are necessary in order to meet the domestic and transnational organized crime threats of the 21st Century. Attorney General Ashcroft considers passage of this legislation essential to any success in disrupting and dismantling the business of organized crime and the cruel reality of terrorism.

Conclusion

I believe that the extraordinary events of September 11th should provide the impetus to jump-start consideration of money laundering legislation that will allow us to address the threats presented to us by international terrorists and criminals. The Department stands ready to provide any assistance it can to facilitate prompt consideration of its legislative proposals.

I would like to conclude by expressing the gratitude of the Department of Justice to the Committee for holding these hearings today. We in the Department of Justice look forward to working alongside our Treasury colleagues, with this Committee, with your other colleagues in the House and your counterparts in the Senate to strengthen the U.S. anti-money laundering regime at this critical hour.

Thank you, Mr. Chairman. I would welcome any questions you may have at this time.